

Central Law Journal.

St. Louis, Mo., September 23, 1921.

MAKING THE LAW A LEARNED PROFESSION.

Probably the biggest thing accomplished by one of the greatest of all meetings of the American Bar Association at Cincinnati, Aug. 31-Sept. 3, 1921, was the raising of educational requirements for admission to the bar to two years' college work and three years of legal instruction.

The effort to raise the educational standards of lawyers has been made more than once in the American Bar Association, but only the slightest restrictions have been added from time to time. It was a most difficult matter to get the bar gradually to raise the entrance requirements from the grammar school standard to graduation from an approved high school, and two years of legal study. Most of the states have at least this minimum qualification, although there are a few, with Indiana at their head, which unfortunately have not set up even this minimum standard.

But the American Bar Association prepared for a big fight this year on the question whether the profession of the law shall continue to rank with the learned professions, or sink to the level of a trade. With this object in view, at least so it was charged by the opponents of the new standard, Mr. Elihu Root was made the chairman of the Section on Legal Education, and Chief Justice Taft attached himself to the section in order to take part in this debate.

The writer has been a member of this section for about ten years and is familiar with the sources of the strong opposition to raising the educational standards for admission to the bar. The first group are the law schools who are not members of that exclusive circle known as the Association of American Law Schools, which in-

cludes all the great private or state endowed universities. The other opposing group consists of those lawyers who had not the advantages of college or law school training but who had attained a fair measure of success and, therefore, did not believe they would be consistent in keeping out of the profession worthy young men who, if given the opportunity, might be able to make a reasonable success in practice at the bar.

There can be no doubt that the supercilious attitude of the greater law schools toward the Section on Legal Education and especially the withdrawal of such association from the group of allied associations which hold their annual meetings jointly with the American Bar Association, has had much to do to prejudice some members of the bar to any and all recommendations which have proceeded from this source. The success of the most recent effort at Cincinnati therefore is due, without doubt, to the fact that the recommendations came from practicing lawyers.

The recommendations of the committee, of which Mr. Root was chairman, are now by their adoption by the American Bar Association, by a vote of six to one, the standards to be sought for in every state. They are as follows:

"1. The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

"(a) It shall require as a condition of admission at least two years of study in college.

"(b) It shall require its students to pursue a course of three years' duration if they devote substantially all their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to studies.

"(c) It shall provide an adequate library available for the use of students.

"(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

"2. The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

"3. The Council of Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not, and to make such publications available so far as is possible to intending law students.

"4. The president of the association and the Council on Legal Education and Admissions to the Bar are directed to co-operate with the state and local bar associations to urge upon the duly constituted authorities of the several states the adoption of the above requirements for admission to the bar.

"5. The Council on Legal Education and Admissions to the Bar is directed to call a conference on Legal Education in the name of the American Bar Association, to which the state and local bar associations shall be invited in an effort to create conditions favorable to the adoption of the principles above set forth."

The sharp conflict over these recommendations was in the Section on Legal Education. This section is composed of law school men of every rank, bar examiners and others particularly interested in the subject of legal education. There were in attendance more than a hundred representative men from almost every section of the country. Mr. Elihu Root and Chief Justice Taft opened the debate in behalf of the committee's recommendation. Then Mr. Edward T. Lee of Chicago, and Mr. Charles F. Carusi of Washington, D. C. deans of law schools which have evening sessions, opened the attack on the committee's recommendations. These speeches were followed by others which deprecated the attempt to keep out of the profession worthy young men too poor to acquire two years' of college education. Even some of the law school deans opposed the resolution, and when Dean Albers of the Boston University Law School joined the group attacking the recommendations of the committee, it looked as if the report was likely to be

adopted only after an amendment reducing the pre-legal qualification to graduation from an approved high school.

It was at this point, however, that the tide turned, and the man who helped to spoil the plans of the opponents of a higher educational standard for lawyers was a stranger to most of those present. He came from the town of Henrietta, Texas, and his name, which was called for loudly after he had finished his speech, was Joseph S. Dickey, Jr. Mr. Dickey, being small of stature, did not make much of an impression when he arose to speak, but he had not proceeded far in his speech before he had nearly the entire section with him. "I'm sick and tired," said Mr. Dickey, "of having the doctors, dentists, preachers, chiropractors and others boast that only educated men can join their profession, but that it takes no great amount of learning to be a lawyer. If that be true then I have been deceived. When I sought admission to the bar I was told that the law was one of the learned professions and that was one of the compensations which induced me to forsake other means of livelihood and become a lawyer. I still believe that the law is a learned profession; I still believe that in the long run it takes an educated man to succeed at the bar, and that it is almost criminal to encourage the uneducated man with promises of success. Feeling that way about this matter, I am for the committee's report from top to bottom and only regret that our profession has been so slow in setting up at least a minimum standard of scholarship for those who shall enter it."

Mr. Dickey's plea was to the professional pride of the lawyer, and in the face of that appeal the Abraham Lincoln argument fell flat. Mr. Taft punctured the Abraham Lincoln argument by saying that if in Lincoln's day the opportunities for learning were as cheap and as accessible as they are today, and two years of college had been required to enter the bar, Lincoln would have met the qualifications. "Men of the type of Lincoln cannot be kept out of the profession by hurdles of this kind," said Mr. Taft. "The

only men which a high educational standard will keep out are men who are looking for a quick and easy way to practice the profession for the money there is in it, and who, in the great majority of cases, are the class from which the ambulance chaser is recruited."

When the vote was taken in the section meeting the recommendations were adopted by about two to one. When the recommendations came before the general body of the Association, composed of nearly a thousand representative lawyers from every section of the country, the recommendations passed by an overwhelming majority. At no meeting of the Association was the enthusiasm for a movement to raise the educational standards for admission to the bar so great as it was at Cincinnati.

Most lawyers, we are sure, will rejoice at the success which has attended Mr. Root's efforts to raise the educational standards of the profession. It was, indeed, impossible, that the profession should stand by while commercial law schools, through misleading advertisements, were inducing thousands of intellectually unprepared young men to embark on the practice of a profession where, by reason of such unpreparedness, they are, in this day at least, doomed to certain shipwreck.

It will be observed that the Committee does not condemn evening schools. They simply declare that all schools, day or evening, shall maintain a certain standard of scholarship; otherwise its students and graduates shall not have the right to take the bar examinations. One state, Kansas, it was announced by Mr. W. E. Hutchison of Garden City, Kans., had already in effect adopted the standards approved by the American Bar Association, to go into effect in 1922. Now, let every lawyer do his best to secure the adoption of the same standard in his own state, until the time shall come, as Mr. Dickey declared, when we shall not hesitate as lawyers to claim our proper standing among the learned professions of the earth.

NOTES OF IMPORTANT DECISIONS.

INJUNCTIONS TO PREVENT A BREACH OF A LAW TO WHICH A PENALTY IS ATTACHED.—Many laws passed by the legislature in the exercise of the police power have penalties attached for violations thereof. They are the so-called "conventional" offenses. For instance, the laws requiring persons seeking to practice certain trades and professions to take out license, usually provide a fine or imprisonment in the county jail, or both, for the failure to take out such license. These penalties seldom restrain the violation of such laws, since those for whom the services are rendered have no incentive usually to prosecute. A recent case raises the question whether equity can enjoin the practice of such trades or professions on the ground that such practice constitutes a public nuisance. The decision, we refer to, is that of the Georgia Supreme Court and holds that unless it is shown that the practice of such trade or profession by the particular individual charged with practicing without a license is in fact injurious or dangerous to the public, an injunction will not be issued simply to prevent the violation of the law. *Dean v. State*, 106 S. E. Rep. 792.

In this case the defendant was offering his services to the public as a chiropractor with the assurance that he could heal or ameliorate certain diseases of the body. He failed to secure a license to practice medicine and the state sought to enjoin him from practice on the ground that for anyone to practice medicine without taking the examination and taking out a license was dangerous to the public welfare and that therefore he should be enjoined therefrom as a public nuisance. In denying the state's contention, the Georgia Court says:

"It may also be said that a nuisance is either public or private or mixed. It may likewise be said that a public nuisance is one which causes hurt, inconvenience, or damage to the public generally, or such part of the public as necessarily come in contact with it. It is obvious that a nuisance may be public though it does not necessarily consist in any act or thing which does in fact cause hurt, inconvenience, or injury to all of the public; generally it is sufficient if it injures those of the public who may come in contact with it. These general principles may be subject to certain limitations, but it is unnecessary to notice the limitations here. Before the first medical act of Georgia (Ga. Laws, 1880-81, p. 172), it was not illegal to practice medicine as such in Georgia without examination and without license. The treatment of diseases according to the chiropractic method could not be classed as a common or public nuisance. It is not per se a nuisance.

The chancellor has refused to find in this case (even if it be conceded that he was authorized so to find) that the treatment of persons according to the chiropractic method, as practiced by plaintiff in error, was harmful to his patients, or to any part of the public, or to the public generally as noted above. The mere fact that the plaintiff in error in practicing his profession without a license may be guilty of a misdemeanor will not authorize a court of equity to enjoin him from practicing his profession. If the medical acts of this state are applicable to the plaintiff in error, he is amenable to criminal prosecution. Unless the Legislature sees fit to extend the jurisdiction of equity or to enlarge the category of public nuisances, equity will not enjoin the plaintiff in error from practicing his profession simply because in so doing he is violating the penal laws of the state."

RECENT DECISIONS IN THE BRITISH COURTS.

There have been an interesting series of master and servant cases recently. *McKeating v. Frame*, 1921, 1 S. L. T. 218, was an action of damages against an employer in respect of the death of a domestic servant from pneumonia. The Lord Ordinary held that the plaintiff had not stated a relevant case, but the Second Division have, however, sent the case for jury trial. In the course of his opinion the Lord Justice-Clerk said: "Nor can I agree with the Lord Ordinary's views as to the master's duty to provide medical attendance for a servant who is unwell. It was, perhaps, quite true that a master was not bound in law to provide medical attendance for his sick servant, but nowadays all he requires to do is to notify the panel doctor. It is averred that on the Monday, the day on which the defendant ordered the girl to leave for home, he was in Shotts himself. I do not know whether the panel doctor resided in Shotts; I should think that is very likely. At any rate, he could easily have sent word to the panel doctor that there was at his farm a sick person entitled to medical assistance." It seems to us that this innovation on the common law is one which the changed social conditions and relations between master and servant may well be held to justify.

In the last-mentioned case the Lord Justice-Clerk made the following observations in regard to procedure at jury trials: "I should like to add this, that, in cases of this sort which come here on a question of relevancy, I do not think any of the observations that fall from the bench ought to be put before the jury at all, for we are giving our opinions upon what is really an *ex parte* statement. The Lord

Ordinary will no doubt have what is said before him, and will give effect to the views expressed, insofar as he thinks proper, in his charge to the jury."

The Workmen's Compensation Act of 1906 awards compensation for inquiry by accident arising out of and in course of a workman's employment. The point in *Dennis v. Midland Railway*, 1921, 37 T. L. R. 623, was whether the circumstances leading to the employee's death constituted an accident. An engine driver, who had to take out an early train, was usually awakened in time by one of the railway cleaners, but one very cold morning he was not called until it was nearly too late, and he hurried off without sufficient clothing and without food. He drove the train, but took pneumonia and died. The railway company had nothing to do with the arrangement for awakening the driver. It was held by the House of Lords that although there had been an accidental failure to awaken the man in proper time, there had been no accident in the course of his employment, and his dependents were not, therefore, entitled to compensation.

It has already been held that a deliberate assault causing injury or death may be an accident in the sense of the Workmen's Compensation Act. Another decision to this effect has been given by the Court of Appeal in *Reid v. British and Irish Steam Packet Co.* A quay foreman in charge of two or more gangs of dock laborers claimed compensation for injury by accident, having been assaulted by a laborer to whom he had given an order. He had been in the employment of the respondents for many years, and at the time of the "accident" was being paid £21 a month. His duties were mainly to direct and supervise the work done, but he was expected occasionally to give manual assistance, if required. It was held, that on the evidence the employment involved risk of assault from a rough class of men, and therefore the accident arose out of the employment. The Master of the Rolls stated as the Court's reasons for this finding that there was evidence that the men over whom the applicant had to exercise supervision and discipline were a rough lot. All persons who had any acquaintance with dock laborers would recognize that they probably would be a rough lot. It was true, however, that no evidence was given of any previous assault on a quay foreman, but there was such an assault on a ship's foreman, and it was not likely that those men would make any distinction between one kind of foreman and another. It seemed to him (his Lordship) that the assault was an acci-

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dent arising out of the employment, the applicant having a rough class of men to supervise. There was, at any rate, a possibility that the supervisor who controlled the men would be assaulted—a possibility greater than that a member of the general public would be assaulted.

The same case is of importance as showing the effect of the increased remuneration of employees on their position. Under the Compensation Statute (the benefits of which do not extend to non-manual workers earning over £250 per year) the employers claimed that the workman was outwith the statute, as he was remunerated on a rate exceeding £250 a year. He was at the time of the accident earning £21 a month, and he would continue to earn £21 a month until his employment was determined by notice—i. e., one month's notice. It was argued that there must be evidence either that he had actually earned £250 in one year, or else that he could not have his employment terminated by notice for such a period that he would have earned £250 in a year before it was terminated. *Griffith v. Owners of Sailing Ship Penrhyn Castle* (1917, 1 K. B. 474), and *MacKay v. S. S. Cramond* (13 B. W. C. 99). But the facts in these cases were different. Lord Justice Scrutton said in the former case: "To satisfy the words of the Act it must be shown that there is a contract of employment, which, unless determined by notice, or by some extraneous fact, such as death, or the destruction of the subject-matter of the contract, will last a year and produce a remuneration of over £250, and it is not enough to show a contract for less than a year at less than £250, as, for example, a six months' contract for £150."

In the present case the Court were of opinion that the remuneration clearly exceeded £250 a year. The firm were thoroughly satisfied with the applicant, whom they had employed continuously for 21 years. The appeal, therefore, was allowed on the ground that the workman was employed otherwise than by manual labor at a remuneration exceeding £250 a year.

The question of injury while drunk has proved troublesome. Sheriff-Substitute Orr annexed to his award in the workmen's compensation case of *Scrimgeour v. William Thomson & Co.*, 1921, 1 S. L. T. 310, the following pertinent note: "This case appears to me to belong to the class of cases of which *Nash*, 1914, 3 K. B. 978, is an example. The facts of the two cases bear a strong resemblance to one another. I think this accident had

nothing to do with *Scrimgeour's* employment except that it occurred more or less in the place of his employment, that is, as he was going on board the ship. Though it may therefore be said to have occurred in the course of his employment, it did not arise out of it. It arose entirely out of the man's state of drunkenness—a dazed and semi-drunken state which was sufficient to prevent him stepping on board with safety—a thing which other men in a more sober condition found no difficulty whatever in doing that night." The Court of Session have recalled the Sheriff's judgment, and held that the workman's injury arose out of his employment and, though he had also been guilty of serious and willful misconduct, yet, as the accident had been fatal, that did not prevent his representatives recovering compensation. This decision, as the Court expressly said, is not intended to prejudge a case in which the circumstances establish that the workman's state of intoxication is the sole cause of a misadventure which befalls him in the course of his employment. This was held to be the situation in *Frith v. Owners of S. S. "Louisianian,"* 1912, 2 K. B. 155. There the workman's state of intoxication was so far advanced as to amount to complete physical incapacity, and, although the accident might be held to have arisen in the course of his employment, the decision was that it did not arise out of it.

Nevertheless, the judgment makes it very difficult to say when intoxication will deprive a claimant of the benefit of compensation. The arbitrator's findings in fact might, it seems to us, be very well allowed to stand as justifying the conclusion at which he had arrived.

The Lord President put the ground of decision as follows: "That the consumption of the liquor by the workman was a circumstance conducive to the accident is clear. But the accident consisted in the fall from a high ladder, and falls from high ladders and the like are among the risks to which his employment peculiarly exposed him—drunk or sober. It is true that the risks arising out of any employment are enhanced by circumstances in the workman's condition which impair his control of his own movements, and a workman who comes to his work so much the worse of drink as to be unfit to perform it, may properly be held guilty of serious and willful misconduct if he suffers from an accident to which his unfitness has conduced. But this provides no reason for concluding that the accident does not arise out of the employment, and if (as happened here) the accident results in

his death, his misconduct, even though serious and willful, is of no account."

DONALD MACKAY.

Glasgow, Scotland.

THE 1921 MEETING OF THE AMERICAN BAR ASSOCIATION.

The meeting of the American Bar Association at Cincinnati was an unusual success from many points of view. First it was the most largely attended—over 1,200 registered delegates. Second, it was the hottest, from the standpoint of actual temperature; third, it was thoroughly representative of the bar. There were in attendance more State Supreme Court judges than ever before and the active participation in the proceedings, by men like Elihu Root of New York, Senator Sutherland of Salt Lake City, Chief Justice Taft of Washington, Frederick W. Lehmann of St. Louis, Senator Thomas of Colorado, Prof. Wigmore of Chicago, Former Ambassador Davis of West Virginia, and many others, caused the discussions to prove interesting and profitable.

COMMISSIONERS ON UNIFORM STATE LAWS

The Conference of Commissioners on Uniform State Laws met the week previous to the Association meeting. Thirty-eight states were represented by duly appointed representatives, three to each state. Hon. Henry Stockbridge of Maryland presided.

No new laws were promulgated by the Conference but considerable progress was made upon bills which have been pending before the Conference for several years. The finishing touches upon the Uniform Corporation Act were made at this session and it is expected that the act will be finally approved and adopted at the session next year.

The influence of the Conference was shown by the large number of legislative proposals that were presented to the Committee on Scope and Program. Most of these proposals were new and untried

schemes for social or political reform and it was necessary to inform the proponents of these measures that the Conference could not participate in any reform propaganda. The only exception made to this rule was the acceptance of an invitation extended on behalf of the National Chamber of Commerce and other business organizations that the Conference consider the advisability of preparing a Uniform Arbitration Law. A special committee was appointed to consider this question of which Mr. Alexander H. Robbins, of St. Louis, editor of the Central Law Journal, was appointed the chairman.

Three new uniform acts appeared before the Conference for the first time in the shape of tentative bills, namely, the First Tentative Draft of a Uniform Fiduciaries Act, the First Tentative Draft of a Uniform Mortgage Act and the First Tentative Draft of a Uniform Aviation Act.

The Aviation Act received very earnest consideration and provoked an interesting discussion. Manufacturers of aeroplanes, as well as aviators, united in urging the Conference to complete this act in time for its passage next year. Army aviators from Ohio entertained the Conference at McCook Field, Dayton, Ohio, with demonstrations of the use and practical needs of aviation and Prof. Bogert of Cornell University, Chairman of the Committee on Aviation, together with several members of his committee, made several flights in order to observe the practical working of the aeroplane.

The Conference also fully considered a Second Tentative Draft of a Uniform Declaratory Judgments Act and sent it back to the Committee with several important amendments. It is thought that this Act will be ready for final action next year.

THE AMERICAN BAR ASSOCIATION MEETING

The Association opened its session in the Ball Room of the Hotel Sinton by standing silent and reverent for a few minutes out of respect for the memory of its deceased President, William A. Blount of

Pensacola, Fla. Mr. Hampton L. Carson, of Philadelphia, a former president of the Association, called the meeting to order. The address which took the place of the President's Address on the program was delivered by Mr. James M. Beck of New York, Solicitor General of the United States.

PRESIDENT HARDING'S GREETING.

President Harding sent a letter of greeting to the Association which was received with many comments of approval. The President wrote:

"Nowhere is there crystallized, I believe a finer conception of freedom under the law, a broader, more human and unselfish purpose of service, progress and betterment than in the American Bar Association.

"Here we find attested the highest ethics of a noble profession. These are the only ethics that have ever found expression in your activities: and from your annual meetings they have reflected to court, consultation and bar everywhere. They have lighted the way to legislative achievement, administrative advance and a constant, conservative measure of social progress.

"It will not overstep the proprieties of such a note as this, I trust, if I suggest how our very civilization at this time, need a firm adherence to these lofty aims by those who, like ourselves, are particularly equipped to help direct these social and political operations. We would be blind, indeed, if we did not recognize that there is a tendency to examination and inquisition even of traditions and institutions that once were held elemental, almost sacred.

"No greater influence than your own could be arrayed in favor of openminded, disinterested inquiry into the justification for these criticisms, and if you adopt a liberal attitude toward such inquiries you will be the more potent in safeguarding the good that we possess and rightly shaping the measures of progress that we must have."

SECTION OF CRIMINAL LAW.

This section was presided over by Mr. Edwin M. Abbott, of Philadelphia. Among several interesting addresses was that of Mr. Edwin W. Sims, President of the Chicago Crime Commission, who declared that prompt trials and certain punishment of criminals would do more than anything else to reduce crime. He says in part:

"Existing criminal laws in America are the evolution of centuries of practical experience. As they have been developed they are invaluable. There are those, however, who attack the theory of punishment and who, contending that crime is a disease, recommend and urge that punishment be abolished and some other form of treatment substituted. It is a grave mistake to interfere in any way with, impede or hamper the enforcement of, existing laws which have been centuries in development, at least until the experiment has been thoroughly tested and found to be practical.

"Three years ago the Chicago Association of Commerce appointed and financed a Crime Commission. The commission does not of itself undertake the apprehension nor the prosecution of criminals. It limits its activity to an investigation of crimes of violence, murder, burglary and robbery. It early reached the conclusion that crime flourished because criminals escaped punishment and that the principal avenue of escape was the delay in the trial of criminal cases.

"On April 1, 1920, 135 persons, previously indicted for murder, were awaiting trial in Chicago. In 104 cases the accused were at liberty on bond. The situation was brought to the attention of the courts and officials by the Crime Commission, with the result that four judges then in the Civil Courts volunteered to sit in the Criminal Court and try cases until the murder docket was cleared. The trial of these cases resulted in the sentencing of 12 to hang and 12 to the penitentiary for from one year to life.

"The effect on the number of murders in Chicago was electrical. Immediately the murder rate there dropped 51 per cent where it has since remained. The record for the first seven months of each of the last three years is as follows: 1919, 232; 1920, 87; 1921, 91."

The following officers were elected by the Criminal Law Section: President, Floyd E. Thompson, Rock Island, Ill., W. O. Hart, of New Orleans, La., Vice President; and Edwin M. Abbott of Philadelphia, Secretary and Treasurer.

ENTERTAINMENT AT CINCINNATI.

As this report of the meeting at Cincinnati is purposely discursive, this is as good place as any to break in with a tribute to Cincinnati's hospitality and especially that

of the lawyers of the Cincinnati and Ohio State Bar. Province M. Pogue, President of the Cincinnati Bar Association and Dan W. Iddings of Dayton, Ohio, President of the Ohio Bar Association were "on the job" all the time in taking care of the visiting lawyers. Mr. Iddings made such an impression on the Louisiana delegation that they publicly presented him with a beautiful memento of their esteem.

The climax to the unusual hospitality extended to this Conference was the trip to Dayton and the entertainment of the entire Conference at lunch at the plant of the National Cash Register Company, and in the evening at an alfresco dinner on the beautiful lawn of John H. Patterson.

WOMEN LAWYERS AT CINCINNATI.

There was a larger attendance of women lawyers than ever before in the history of the Association and one of these, Miss M. Pearl McCall of Boise, was the first woman ever elected to the General Council. She was the only lawyer from the State of Idaho present at this meeting and the suggestion of several leaders of the bar was urged to put up her own name as representative from Idaho and the nomination was approved by the Association.

Two judges from Washington, D. C., both women, were Judge Mary O'Toole of the Municipal Court and Judge Catherine Sellers of the Juvenile Court.

ATTORNEY GENERAL DAUGHERTY ON THE VOLSTEAD ACT.

The press dispatches, quoted largely from the closing part of the address of Attorney General Daugherty in respect to the enforcement of the Volstead Act. Here are the exact words of the Attorney General on this point:

"Another subject that undermines respect for law, especially prominent at the present time, is an erroneous theory of personal liberty under our constitutional system. This controversy is as old as government itself. It has been asserted with especial vigor recently owing to the Eighteenth Amendment to the Constitution of the United States and to the amendments

in the various state constitutions, and because of legislation on the same subject by Congress and the various State Legislatures.

"The question of the limitations of personal liberty is, in the first instance, a question of political philosophy and not of law. The advocates of personal liberty have ranged all the way from those who favor the widest measure of license to the individual to do as he pleases on the one hand, to those who would restrict the individual by the most puritanic standards on the other hand. There is no quarrel on my part with any of these groups. As long as life, personality, individual endowment of mind or heart differ, there will be differences of opinion among the constituent members of society on questions of this sort. As long as they remain purely speculative questions in the realm of the political philosophy proposed by their respective advocates as the basis for social organization, there is and can be no objection to them. Every one has a right to advocate any view that he pleases on this subject. However, when public sentiment has crystallized into law, there can be no question as to the duty of good citizens with reference thereto. They may still debate as to the wisdom of the law, but there is only one course of conduct, and that is obedience to the law while it exists.

"In order that the weight to be attached to the argument of those persons who claim their personal liberty is invaded by legislation of Congress and the various State Legislatures, it may be profitable to refer to the history of this sort of legislation. In the evolution of government we have gradually limited the sphere of individual liberty. A study of the history of legislation wherein personal liberty has been limited by statute will show that these enactments have been vigorously challenged and the same arguments have been used against violation of personal liberty that we hear today. For example compulsory education laws, anti-duelling laws, anti-gambling laws regulating social relations and practically all the abridgments by statute of the common law have in the past been opposed by the argument that we now hear, namely that they are violations of personal liberty.

"Let me be not misunderstood. I do not mean to impute moral turpitude to him who is opposed to the Eighteenth Amendment or similar amendments in our state constitutions, or who is opposed to the Volstead

act or similar legislation in our states. All I mean to say is that the argument of undue abridgment of personal liberty, advanced today, has in the past been advanced by every champion of lawlessness who has sought to find an excuse for unlawful conduct.

"My duty is clear. As long as I am the responsible head of the Department of Justice the law will be enforced with all the power possessed by the government which I am at liberty to call to my command."

SIR JOHN SIMON.

Sir John Simon, the leader of the English bar, was very popular with the lawyers at Cincinnati. He is a barrister with the most lucrative trial practice in England, and his methods of speaking were such that he was able to hold the largest audiences spellbound by the clearness of his thoughts and the interesting manner of their presentation. He spoke on many different occasions. In most cases he avoided shop talk, and attempted the solution of no profound problems, and yet his remarks were interesting and entertaining.

On one occasion, in referring to the "ancient grudge" of Americans toward England, he said:

"In the early American days there was a movement to repudiate the common law because it came from England. It would be as reasonable for Americans to repudiate the game of golf because it comes from Scotland; instead of which the authors of your independence lost no time in making a tee-shot into Boston Harbor and naming one of your early battlefields Bunker Hill."

In referring to the obligation resting on the lawyer to take an interest in public affairs, he said:

"A man's livelihood should not be the whole of a man's life. It is the temptation of this feverish age to pursue the means of life so eagerly as to forget the end of life. I confess myself to be one of those who thinks that it should be part of a man's religion that his country should be well governed, and that in practicing this part of his religion, he should not bathe in cream on Sunday and live skimmed milk the rest of the week. It is the glory of the bar that its training and discipline are capable of producing and in times of crisis have often pro-

duced men whose brief has been Liberty and whose client has been Humanity."

In delicately referring to the World Conference on disarmament Sir John said:

"An enlightened public opinion ought now to be directed to the folly, the risk and the burden of bloated and extravagant expenditure upon the machinery of war. If there be any community or nation which desires to make good its claim to be the moral leader of the world that title would indeed be justly earned by the nation amongst us which shows the way by an actual and substantial reduction of excessive expenditure on preparations for war. Other nations would follow, and children yet unborn would rise to call those blessed who pointed out the true path of peace."

His sense of humor is very keen. At the banquet Friday night it was very warm, and Chief Justice Taft was perspiring freely, and in spite of his smile and chuckle, appeared quite uncomfortable. Sir John was speaking, and in the midst of his address, addressing the Chief Justice, said:

"Mr. Chairman, the name of your beautiful city, which this week has extended to us such a warm welcome, recalls to my mind the classic memories of the Roman plow boy called to lead the Roman Republic in a time of great stress and trial. Cincinnati was in the field when the notification committee' (that is what you call it in this country, I believe) came to announce his election. It was a hot, summer day, and the new president-elect, so tradition tells us, was clad in nothing but the summer breezes and a breech cloth. As I have sat here this evening looking at your melting and beaming countenance the thought passed through my mind [here the audience began breaking into laughter and cheers] whether you, in particular, my dear Mr. Chairman [more laughter], have not more than once this evening regretted [more laughter and cheers, Mr. Taft joining in heartily] the passing away of the simpler customs of an earlier day?"

CHIEF JUSTICE TAFT'S PLEA FOR MORE FEDERAL JUDGES.

Chief Justice Taft played the part of one of the hosts to the lawyers at Cincinnati. He was at all the sessions, took part in many of the debates, and presided

at the final banquet on Friday night. His greatest speech probably, was in behalf of the resolution endorsing the appointment of eighteen federal judges-at-large and giving the Supreme Court visitorial powers over the lower federal courts. On this point the Chief Justice said:

"The congestion which exists in many of the districts of the United States—and it has been growing because of the gradual enlargement of the jurisdiction of the courts under the enactment by Congress of laws which are the exercise of its heretofore dormant constitutional powers—has been greatly added to by the adoption of the Eighteenth Amendment and the passage of the Volstead law. Something must be done therefore, to give the Federal Courts a judicial force that can grapple with these arrears and end them.

"The Attorney General has been much impressed with the great increase in business in the courts, and has recommended to the President and to Congress the adoption of a law which it seems to me will much facilitate the dispatch of business in the courts of the United States.

"Of course those courts have been aided, I suppose, by the workmen's compensation act of the United States, which has transferred to a different tribunal the settlement of controversies that took up much of the time of the courts in jury trials; but the other causes of increase in business have been so great that the number of cases pending is startling in its growth and size. The bill which the Attorney General has presented to Congress, and which has now been introduced by the Chairman of the Judiciary Committee of the Senate, adds to the judicial force of the United States, two District Judges-at-large in each circuit, or eighteen in all.

"They are to have and exercise all the powers of District Judges except that they may not make appointments of clerks and other officers, which should obviously be made by Judges knowing the vicinage. They are, as all Judges must be, appointed or created, under the judicial power of the United States, granted by the third article of the constitution, Judges for life, but the provision of the new bill is that when they die or resign, their successors shall not be appointed unless Congress shall affirmatively so decide.

"This is as temporary a provision for a Federal Judge as the constitution will per-

mit. These Judges-at-large are to be assigned by the Senior Circuit Judge of their circuit to any district in their circuit when needed, and by the Chief Justice to any district in any other circuit.

"In the bill is another important feature that in a sense contains the kernel of the whole progress intended by the bill. It provides for an annual meeting of the Chief Justice and the senior Circuit Judges from the nine circuits and the Attorney General, to consider the required reports from District Judges and Clerks as to the business in their respective districts, with a view to making a yearly plan for the massing of the new and old judicial force of the United States in those districts all over the country where the arrears are threatening to interfere with the usefulness of the courts.

"It is the introduction into our Judicial system of an executive principle to secure effective teamwork. Heretofore each judge has paddled his own canoe and has done the best he could with his district. He has been subject to little supervision if any. Judges are men, and some are not so keenly charged with the duty of constant labor that the stimulus of an annual inquiry into what they are doing may not be helpful.

"With such mild visitation a Judge is likely to co-operate much more readily in an organized effort to get rid of business and do justice than under the 'go-as-you-please' system which has left unemployed in easy districts a good deal of the judicial energy that may be, under this plan, usefully applied elsewhere."

THE NEW OFFICERS.

Mr. C. A. Severance, of St. Paul, was elected President of the Association; Mr. W. Thomas Kemp of Baltimore, was elected Secretary and Mr. Frederick E. Wadhams of Albany, N. Y., Treasurer. It will interest our readers to know that Mr. Thomas W. Shelton of Norfolk, Va., was elected to a three-year term on the Executive Committee. Mr. Shelton also gave a dinner to Sir John Simon, reciprocating the favors extended to him (Mr. Shelton) on his recent visit to England.

CRITICISM OF JUDGE LANDIS.

One of the resolutions that raised considerable discussion but was finally passed was the resolution condemning Judge Kenesaw M. Landis for his acceptance of em-

employment as the supreme arbiter of baseball. The resolution was presented by the acting President, Hampton L. Carson of Philadelphia, and provided as follows:

"Resolved, That the conduct of Kenesaw M. Landis in engaging in private employment and accepting private emolument while holding the position of a Federal Judge and receiving salary from the Federal Government meets with our unqualified condemnation as conduct unworthy of the conduct of a Judge, derogatory to the dignity of the bench and undermining the public confidence in the independence of the judiciary."

Mr. Carson declared that such action on the part of Judge Landis destroyed the moral effect of the Code of Ethics unless it was unequivocally condemned by the Association. Former Senator J. Hamilton Lewis of Illinois pleaded for a more careful investigation and a hearing before the Association acted but his motion to that effect was defeated and Mr. Carson's resolution adopted.

A. H. ROBBINS.

MASTER AND SERVANT—WORKMEN'S COMPENSATION.

CAPONE'S CASE.

Supreme Judicial Court of Massachusetts. Suffolk. July 5, 1921.

132 N. E. 32.

If an employee's injury prevented his pursuing his former employment, or if, by reason of business conditions, he could not secure work at his former occupation, and his ability to labor in other pursuits was impaired by the injury, this circumstance was important in determining the amount of wages he could earn, and should be taken into account in deciding what compensation should be awarded him because of his diminished capacity to work, under St. 1914, c. 708, § 5 (Gen. Laws, c. 152, § 35).

CARROLL, J. The employee was injured while working on a milling machine on April 29, 1920. As a result of his injury the first phalange of the ring finger on the left hand was amputated. His average weekly wages were \$24.96. He was paid compensation to December 2, 1920. On a rehearing of the case

it was found that the injured finger was sensitive, the stump thinly covered with skin, and that there may be a filament of "nerve caught in the end or near the surface where it strikes when the hand is working"; that the employee obtained employment in a grocery store but was unable to do the work because of the condition of his finger, and on this account cannot perform "general heavy work"; and that he has a partial earning capacity of \$12 a week. He was awarded compensation of \$8.64 a week, that being two-thirds of the difference between \$12 and his former weekly wages of \$24.96 from December 3, 1920, to January 3, 1921. To continue under the provisions of the statute, the insurer appealed from the decree of the superior court affirming the findings of the Industrial Accident Board, on the ground that there was no evidence that the employee was incapacitated from doing the work of operating a milling machine, at which work he was employed when injured.

Statute 1914, c. 708, § 5 (G. L. c. 152, § 35), provides that while incapacity for work resulting from the injury is partial, the injured employee shall receive a weekly compensation equal to sixty-six and two-thirds per cent of the difference between his average weekly wages before the injury and the average weekly wages he is able to earn thereafter. When the employee was injured his work was that of operating a milling machine. If, on December 3, 1920 (from which time he was found to be partially incapacitated for labor), he was in fact able to operate such a machine and could secure employment at this work, then there was no incapacity to labor resulting from the injury. But if his injured finger prevented his pursuing his former employment, or if by reason of business conditions he could not secure work at this occupation and his ability to labor in other pursuits was impaired by his injuries, this circumstance was important in determining the amount of wages he could earn and should be taken into account in deciding what compensation should be awarded him because of his diminished capacity to work. Reduction in earning capacity occasioned by general business conditions and not due to the injury could not be considered. The statute contemplates that compensation is to be paid for diminished capacity to earn wages; and the employee, in common with others, must bear the loss resulting from business depression. *Durney's Case*, 222 Mass. 461, 111 N. E. 166. If, however, the employee could not return to his former employment because of business conditions and sought for or secured employment elsewhere which he could perform, if it were not for his inability

because of his injury, his earning power and labor efficiency were lessened within the meaning of the statute, and he was entitled to the compensation provided. *Sullivan's Case*, 218 Mass. 141, 105 N. E. 463, L. R. A. 1916A, 378; *Duprey's Case*, 219 Mass. 189, 106 N. E. 686; In *Barry's Case*, 235 Mass. 408, 126 N. E. 894, it was found that the employee was no longer able to do the work at which he was employed when injured; that in the general labor market his capability to earn wages was diminished; and the decree awarding compensation on this ground was affirmed. See *Sullivan's Case*, supra; *Duprey's Case*, supra; *Septimo's Case*, 219 Mass. 430, 107 N. E. 63. In the case at bar it has been found that because of the employee's injury his earning capacity was reduced; but the record does not show that he failed to secure work at his former employment, or that his efficiency in that work was in any way impaired. In our opinion the case should be recommitted to the Industrial Accident Board for further hearing on this point. So ordered.

NOTE—*Higher Wages After Injury as Affecting Employee's Right to Compensation*.—Whether or not the right of an employee, partially incapacitated from labor, to compensation is affected by the fact that subsequent to the injury, he is earning more than before the injury depends upon the provisions of the statute under which his claim is made. In some states this fact does not affect his right to compensation. *Epsten v. Hancock-Epsten Co.*, Neb., 163 N. W. 767, 15 N. C. C. A. 1067; *Dennis v. Cafferty*, 99 Kan. 810, 163 Pac. 461; *Sauvian v. Battelle*, 99 Kan. 810, 164, Pac. 1086; *Joliet Motor Co. v. Industrial Board*, 280 Ill. 148, 117 N. E. 423, 15 N. C. C. A. 75.

In the *Sauvian case*, supra, the Court said: "It is settled that, when one is totally or partially incapacitated for hard manual labor, he is not to be denied compensation because he obtains employment even at better wages at a task which he is physically able to perform."

In other states this fact is taken into consideration. In *re Dove*, Ind. App., 117 N. E. 210.

ITEMS OF PROFESSIONAL INTEREST.

JUDGE WILLIAM C. HOOK

A gentle soul was dear Judge Hook,
His life was pure as crystal brook,
With dignity and simple poise,
He lived his life without much noise.

When he decreed, with natural grace,
He made the Bench a holy place.
With mind trained solely for the Right,
He kept the Wrong clear out of sight.

Both just to foe and fair to friend,
Ever careful not to offend.
He ne'er bore any man a grudge,
And always was an upright judge.

Tall, stately, thoughtful, man of God,
All lawyers loved his friendly nod.
But all knew they had him to fight,
If their cause was not just and right.

He believed in Constitutions,
As the peoples' institutions.
And no void act by him could pass,
Regardless of the clash of class.

With love of country dominant,
For principle always adamant.
Off duty he loved wholesome play,
For he knew "EACH MAN HAS HIS DAY."

With justice as his guiding star,
He knew how weak we mortals are.
Whether or not he gained the palm,
His rule was ever to be calm.

Why should he bear the yoke of 'must,'
When he to all men was so just—
But as he said, 'tis nature's plan,
Which "deals alike with every man."

Rest, gentle Judge, till Judgment Day.
"Your Honor," long with us will stay,
You'll live in hearts you leave behind,
With those who knew you just and kind.

EDWARD J. WHITE.

St. Louis, Mo.

BOOK REVIEWS

CARNEGIE BULLETIN ON "TRAINING FOR THE PUBLIC PROFESSION OF THE LAW."

The 15th Bulletin of the Carnegie Foundation for the Advancement of Teaching has been eagerly awaited by those members of the legal profession who desire to see an advance step taken in respect to the standards of admission to the bar. This bulletin deals most thoroughly with all the problems of legal education and should be in the hands of every law school instructor, the members of all boards of law examiners, and the members of all committees of local bar associations having under consideration the question of the legal, mental and moral qualifications of those seeking admission to the practice of the law.

Among the many interesting findings of this particular investigation is that the law is not a private, but a public, profession, and should be kept accessible to the people. The investigators find that the fact that no limit is placed

upon the number of lawyers admitted to practice is the one feature that distinguishes these "officers of the court" from governmental officials proper, who enjoy their special privileges during good behavior and are compensated by fees. The problem of the training and testing of lawyers forms thus a subordinate part of the broad problem of the method of recruiting the civil service. This problem of governmental organization presents in a democracy peculiar difficulties, because while a democracy, equally with other forms of government, needs competently trained servants, unlike other forms of government it demands also that access to the public service shall not be restricted to that element in the population that can afford to take a long and laborious course of preliminary training. Prior to the Civil War this latter demand was emphasized at the expense of efficiency and of a sense of professional responsibility, both in the civil service proper and in the bar. Since then, there has been a movement to stimulate these qualities through more stringent rules for admission to the bar.

The study is divided into eight parts, of which the first is in the nature of a general summary. The law of England, and the English system of legal education as this existed prior to the American Revolution, are first discussed, and subsequent developments in both England and Canada are then briefly summarized, as a background against which our own divergent development can be made clear. Following this, Part II traces the development of our present systems of bar admission. Part III contains a detailed account of the origin of law schools, and Part IV, of bar associations, including a description of the organic weaknesses that at present handicap these potentially valuable organizations. Part V shows how bar admission rules have been adjusted to meet the situation created by the rise of these novel and as yet antagonistic institutions. Parts VI and VII discuss at length the development of the law school curriculum and of law school methods during the vital quarter century that followed the Civil War; and the first chapter of Part VIII shows how, during the more mechanical period that ensued prior to the War with Germany, the great growth of evening or "part-time" law schools, coupled with insistence upon preliminary college training by other schools, has dealt a death-blow to the notion that all law schools can be made alike.

It will interest lawyers generally that the report does not agree with the stand taken by the Association of American Law Schools denying entrance to such Association of schools which have evening sessions. The report com-

mends the evening school in order to give access to the law to those too poor to give full time to study, but suggests that these schools be brought up to higher standards of entrance requirements and legal studies than is the case today, at least as to such graduates as expect to enter the profession of law. On this point the report says:

"Over half the existing law schools, including over half the aggregate number of law school students, offer instruction during the late afternoon or at night. This movement to make law study possible for self-supporting students of average ability is justified on political grounds. The existing grave deficiencies of these schools are largely attributable to the fact that many of the best institutions and best law teachers, influenced by the theory of a unitary bar, regard part-time education as inherently evil."

The bulletin discusses the various kinds and methods of legal instruction and the relation of the bar to the methods thus adopted and the character of the standards to be set up by Supreme Courts and Bar Examiners for entrance into the active practice.

Printed in one volume of 498 pages, bound in paper, and distributed free upon proper application by the Carnegie Foundation for the Advancement of Teaching, 522 Fifth Ave., New York.

CLARK ON EQUITY (MISSOURI EDITION).

What is probably the forerunner of a new type of law text books has appeared in the form of a one volume work on equity by Prof. George L. Clark, formerly professor of equity of the Missouri University.

To call the book elementary may be misunderstood. It is elementary only in the sense that in the main part of the work all the general principles are stated in clear, concise terms, preceded by a very valuable summary of the history and growth of equity jurisprudence.

The work is not elementary, however, when the appendix is taken into consideration, for this appendix to the "Missouri Edition" contains a full and complete annotation of Missouri cases which, by reference to sections of the text, are made part of the work itself. Thus, to the Missouri lawyer it is practically an exhaustive treatment of the problems involved, and more valuable than many larger works that do not so carefully distinguish the Missouri cases.

Prof. Clark has prepared special state editions for Ohio, Tennessee, Illinois, Massachusetts and New York and promises that other special state editions will be published as opportunity presents itself.

We have read much of the text of this book with great interest. Prof. Clark has the faculty of expressing his thoughts with peculiar felicity as well as with unusual clearness and accuracy. His treatment of the subject displays a profound knowledge of the history and principles of equity and a familiarity with the facts and decisions of the great leading cases.

We cannot imagine a better text book for the student nor a better treatise (when coupled with an appendix of all state decisions) for the practicing lawyer. To our mind all text books must ultimately take this form. The more recent text books which purport to completely treat such big subjects as equity, contracts, corporations, negligence, etc., are unwieldy in size, inaccessible and unnecessarily expensive.

It is not every text writer that has the ability to compact into short compass all the leading principles of his subject and then distinguish the application of such principles by a complete annotation of the cases of a particular state. But this is what Dr. Clark has done, and done well. We confidently look for books of this kind gradually to supplant other text books of the digest type.

Printed in one volume of 793 pages and published under the supervision of the author himself.

CORRESPONDENCE.

UNIFORM BILL OF LADING ACTS—STATE AND FEDERAL.

Editor, Central Law Journal:

Your editorial comment on the case of Michigan Central R. Co. v. Owen, on p. 95 of issue of August 12, is likely to be somewhat confusing because of your failure to state that the Uniform Bill of Lading, of which section 5 is involved, is not the Uniform Bill of Lading of the American Bar Association, but the Uniform Bill of Lading prepared, and required to be adopted by all railroads operating under its jurisdiction, by the Interstate Commerce Commission. It is an unfortunate matter that the Interstate Commerce Commission should have adopted the same title for their bill of lading that is used by the American Bar Association. But when it becomes generally known that there are two Uniform Bills of Lading in existence, and referred to in the reported decisions the harm and confusion will be minimized. Yet, it would be well to designate which of the Uniform Bills of Lading is being discussed.

Yours very truly,

JAMES M. KERR.

Pasadena, Cal.

HUMOR OF THE LAW.

She—Since our engagement is off, I shall return your diamond ring.

He—Yes, and as diamonds have dropped 20 per cent since you've had it, you might add a check for the difference.—*Boston Transcript*.

First Crook: "De last guy I stuck up didn't have nuttin'."

Second Crook: "Wotcha do, croak um?"

First Crook: "Nah! He looked like a straight guy so I takes his I. O. U. for 50 bucks."

"I bequeath to my heirs and assigns forever," said the old gentleman who was making his will, "five cases of Scotch, one barrel of—"

"Wait a minute," said the lawyer.

"Eh?"

"We might as well leave out the word 'forever.'"—*Birmingham Age-Herald*.

"Just a word," said the lawyer to his fair client.

"Yes?"

"If your husband asks for the custody of the poodle don't try to win the sympathy of the court by weeping and calling the—er—little animal your 'precious darling.'"

"Why not?"

"The judge is the father of ten children, and he's proud of it."—*Birmingham Age-Herald*.

"A youth had just been appointed to a post in the tax office of a country town. One day a farmer rushed into the office, proclaiming that he had been wrongly charged two dollars for keeping a goat.

The youth insisted that it was all correct, remarking that it was in the rules, at the same time pointing out the following clause to the irate farmer: "For all property bounding and abutting on the highway, fifty cents per foot."—*Exchange*.

In an ejectment case down in Georgia the attorney for the defendant pleaded the statute of limitations and struggled for a long time to get a witness to fix accurately the date when the adverse holding began. The Judge grew impatient and took charge of the witness himself. "Can't you remember some occasion such as the election of a president or governor, or some other important event," said the judge, "by which you can fix the date?" After a brown study, the witness' face lit up and he said: "Yes, I can, Judge. It was in January of the same year that John Butt wintered March Addington's bull."

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

Alabama.....	42, 43
California.....	10, 45
Illinois.....	58
Indiana.....	67
Kentucky.....	64
Maryland.....	53, 54
Massachusetts.....	1, 8, 13, 14, 23, 30, 31, 44, 55
Michigan.....	17, 46
Minnesota.....	11, 16
Mississippi.....	26, 47
Missouri.....	19, 38, 50
Nebraska.....	9, 34, 40
New Hampshire.....	29
New Jersey.....	24, 52
New York.....	15, 21, 22, 59, 60, 65
North Carolina.....	27, 33, 35, 56, 66
North Dakota.....	39
Ohio.....	62
Oregon.....	12
Pennsylvania.....	25, 49, 51
Rhode Island.....	28, 32
South Carolina.....	61
South Dakota.....	48, 57
Texas.....	7, 18, 36, 41
United States C. C. A.....	2, 3, 4, 5, 6
United States D. C.....	20, 37
Vermont.....	63
Wisconsin.....	68

set aside the sale, since a proceeding to review an order in bankruptcy is limited to matters of law arising on an undisputed and indisputable record or finding of ultimate facts.—In re Leigh, U. S. C. C. A., 272 Fed. 678.

6.—Voluntary.—A provision in a corporate charter authorizing disposition of the entire property of the corporation with the consent of two-thirds in interest of the stockholders, which thereby impliedly prohibits such disposition without the consent of the stockholders does not deprive the directors of authority to direct the filing on behalf of the corporation of a petition in voluntary bankruptcy.—In re De Camp Glass Casket Co., U. S. C. C. A., 272 Fed. 560.

7. Banks and Banking.—Act of President.—Where the president of a bank acted as an individual and not as an official of the bank in purchasing defendant's cotton and promising to deposit the proceeds in the bank to his credit, the bank was not responsible to the defendant for his failure to deposit the proceeds to defendant's credit, though he deposited them to his own credit; it not appearing that any of the other officers knew anything about the nature of the transaction until long afterwards.—Hull v. Guaranty State Bank, Tex., 231 S. W. 810.

8.—Exchange Value.—A trust company, which sold to a customer a foreign order, the payment of which was stopped by the bank commissioner when he took charge of the trust company, is liable to the purchaser of the order for the amount thereof at the rate of exchange prevailing on the day the trust company breached its contract by stopping payment on the order.—Beecher v. Cosmopolitan Trust Co., Mass., 131 N. E. 338.

9.—Overloan Not Void.—As a general rule, courts will not refuse to enforce a bank's contract for the loan of money, or disallow damages for a breach thereof, merely because the amount lent exceeds 20 per cent. of the capital and surplus, notwithstanding a statute penalizing the banker for exceeding that limit.—Bank of College View v. Nelson, Neb., 183 N. W. 100.

10. Bills and Notes.—Disputed Claim.—Where there was basis for the claim of lessor of sheep at the expiration of the lease that the lessee was then obligated to return to lessor the full number of sheep received, and could not account for the admitted deficiency merely by paying \$5 per head, and the lessee threatened to have such number of sheep seized from lessee's flock, there was a bona fide dispute, the compromise of which was good consideration for lessee's check to lessor.—Ilfield v. Porter, Cal., 198 Pac. 429.

11.—Holder in Due Course.—When it was shown that negotiable promissory notes were obtained by the fraud of the payee, the burden of proving that it became a holder in due course was cast on a bank to which they were indorsed by the payee without recourse.—Farmers' State Bank v. Cooke, Minn., 183 N. W. 137.

12. Brokers.—Commission.—Where a contract provided that, if plaintiff should secure a purchaser, he would be entitled to all sums in excess of a certain amount, plaintiff, to recover, must show either that he consummated the contract, and by effecting a completed cash sale created a fund out of which he is to be paid, unless he was prevented from consummating the same by the acts of defendant owners.—Anderson v. Wallowa Nat. Bank, Ore., 198 Pac. 560.

13. Carriers of Goods.—Measure of Recovery.—Value at time and place when delivery of interstate shipment should have been made is measure of recovery when less than value at time and place of shipment.—Crutchfield & Woolfolk v. Hines, Mass., 131 N. E. 340.

14.—Measure of Recovery.—In an action against a carrier for the loss of high explosive shells manufactured by plaintiff for the British government and having no market value properly speaking, the actual value of the shells, determined by the cost of replacing them, or, if shells of similar material could be manufactured at a certain place, such price, with such expenses as might be reasonably incurred in pro-

1. Bankruptcy.—Composition.—Under Bankruptcy Act 1898 § 14c, providing that confirmation of a composition shall discharge the bankrupt from debts other than those to be paid by the terms of the composition and those not affected by a discharge, a subcontractor on a school building, who took no part in the composition proceedings, otherwise than to prove his claim in the usual form and to accept the composition offer, was not deprived of his rights against the contractor's surety, though there was no adjudication of bankruptcy.—McClintic-Marshall Co. v. City of New Bedford, Mass., 131 N. E. 444.

2.—Contest of Claim.—A contested claim against an estate in bankruptcy presents a "proceeding in bankruptcy," within Bankruptcy Act, § 25a, reviewable by appeal, not a "controversy in bankruptcy," reviewable on petition to revise under section 24b, which would include the disposition of the assets of the estate.—Keith v. Kilmer, U. S. C. C. A., 272 Fed. 643.

3.—Landlord's Lien.—Where a purchaser of property at execution sale, which was void because made within four months of the petition in bankruptcy against the debtor, acquired after action was brought against him by the trustee in bankruptcy for the property, the lien of the bankrupt's lessor on the property sold at execution, he could assert that lien as a defense to the trustee's action.—Lewin v. Telluride Iron Works Co., U. S. C. C. A., 272 Fed. 590.

4.—Unrecorded Assignment.—Where there are no statutes making record or registration of an assignment of accounts for security for a loan requisite to validity of the assignment against either assignor or assignor's creditors, the situation is not changed by the intervention of bankruptcy.—Petition of National Discount Co., U. S. C. C. A., 272 Fed. 570.

5.—Validity of Sale.—On petition to revise an order of the District Court reopening a bankruptcy estate for the purpose of having determined whether the sale of the assets was voidable, the validity of the sale, which depended on disputed facts, cannot be considered, but that question can be determined only on appeal from a decree based on a final hearing of a bill to

curing a new contract, would fairly measure the extent of the loss.—*Woonsocket Machine & Press Co. v. New York, N. H. & H. R. Co., Mass.*, 131 N. E. 461.

15. **Carriers of Passengers**.—Act of Passenger.—An elevated railroad company is not liable for the act of a passenger, who throws an object from a moving train, striking and injuring a person standing on the station platform for the purpose of boarding a train.—*King v. Interborough Rapid Transit Co., N. Y.*, 188 N. Y. S. 700.

16. **Negligence**.—That a passenger in a street car falls over a sample case which another passenger has placed on the floor beside him does not, as a matter of law, establish the street car company's negligence; and the court's instruction that if the sample case was so placed and plaintiff fell over it, she was entitled to damages, unless she was guilty of contributory negligence, was erroneous.—*Rittle v. St. Paul City Ry. Co., Minn.*, 183 N. W. 146.

17. **Negligence**.—When a street car stops where other tracks are between it and a station of the company, the rights of people having business with the car and the duty of the company towards them are the same as if all the intervening space between the depot and the car constitutes a platform, and it is negligence to allow another car to run between alighting passenger and the station.—*Terrill v. Michigan United Traction Co., Mich.*, 183 N. W. 46.

18. **Negligence**.—The conductor of a passenger train was not negligent in temporarily obstructing the aisle by standing therein, bending over to speak to some one, as a woman passenger approached, walking to the rear, and lost her balance before she reached him as she halted to wait for him to let her pass.—*Steed v. Gulf, C. & S. Ry. Co., Tex.*, 231 S. W. 714.

19. **Starting Car**.—A street car should not be started merely because a sufficient length of time has elapsed to permit a passenger and those in front of her to board the car safely, for, however long a stop may be, due care requires that a conductor should look to his car before signaling to start.—*Baldwin v. Kansas City Rys. Co., Mo.*, 231 S. W. 280.

20. **Commerce**.—Interstate.—A finding by the Interstate Commerce Commission that a railroad is engaged in interstate commerce and subject to the jurisdiction of the Commission, if supported by any evidence, is binding on the courts.—*City of New York v. United States, U. S. D. C.*, 272 Fed. 768.

21. **Contracts**.—Entirety.—Where a contract to set seven panes of glass in window lights was entire it was not performed, so as to entitle the contractors to recover, where two of the panes which they had furnished and set as agreed were broken by strikers before the other panes were set.—*Greenberg v. Mager, N. Y.*, 188 N. Y. 748.

22. **Substantial Performance**.—Where a contractor intentionally failed to perform the provision of a contract requiring electric wires to be concealed in the ceilings, he cannot recover as for substantial performance.—*Bonyng v. Carex Co., N. Y.*, 188 N. Y. S. 750.

23. **Corporations**.—Assets.—Stock which has been authorized has no validity until actually issued or subscribed for, and is not assets, and stock not even authorized has no greater standing.—*Fitzgerald v. Guaranty Security Corporation, Mass.*, 131 N. E. 462.

24. **Excessive Salaries**.—Where a corporate charter provided that a stockholder ceasing to be an officer, director, or employee should not be entitled to dividends unless he surrendered the stock and received a dividend certificate in exchange, a stockholder not complying therewith was not entitled to sue to restrain the corporation from paying excessive salaries to directors, as excessive salaries are in diminution of dividends, and only those entitled to dividends may complain.—*Prindiville v. Johnson & Higgins, N. J.*, 113 Atl. 916.

25. **Issuance of Stock**.—Where corporate stock was issued pursuant to unanimous vote of all the stockholders, it was valid, although the meeting at which it was authorized was

not called for that purpose on 60 days' notice as provided by statute.—*Scranton Axle & Spring Co. v. Scranton Board of Trade, Pa.*, 113 Atl. 838.

26. **Void Deed**.—The fact that a deed from a corporation to an individual to land was executed on the part of the corporation by its secretary, who was also grantee in the deed, does not render the conveyance void, where the president of the corporation also joined in the execution of the deed, under section 2166, Code of 1906, which provides, among other things, that a corporation may convey its land under the corporate seal and the signature of an officer.—*Mexican Gulf Land Co. v. Globe Trust Co., Miss.*, 38 So. 612.

27. **Descent and Distribution**.—Adequate Consideration.—Consideration of \$3,000 paid by decedents, the administrator and others, to plaintiffs for their quarter interest in a decedent's estate claimed by defendants to have been worth at the time of such sale not over \$12,000, held not so grossly inadequate as to shock the conscience, despite plaintiffs' claim that the interest conveyed by them was worth \$4,000 or \$5,000.—*Forbes v. Harrison, N. C.*, 107 S. E. 447.

28. **Easements**.—Estoppel.—Where plaintiff claimed a right of way over defendants' land by grant by decedents' ancestors in title to plaintiffs' ancestors in title, recitals in the deed to plaintiff and the deeds from and to his ancestors in title mentioning such right of way cannot be set up by way of estoppel against defendants; they being strangers to such deeds, and not privies to any of the parties thereto.—*Jeff v. Reynolds, K. I.*, 113 Atl. 787.

29. **Electricity**.—Due Care.—Plaintiff, working for a company decorating city streets, injured while climbing a pole which defendant electric company and others were using, cannot recover unless he was rightfully there and doing what he had a right to do, and the situation was such that the defendant ought to have anticipated his presence in time to have prevented such injury.—*Lambert v. Derry Electric Co., N. H.*, 115 Atl. 793.

30. **Eminent Domain**.—Damages.—An action of tort will not lie to recover damages incidental to the performance of a public work authorized by the Legislature, such as the construction in the street of a tunnel authorized by St. 1911, c. 741, and the owner of the property damaged must pursue the remedy provided in section 21, providing for the determination and award of damages sustained by reason of property taken or injured under the authority of that act.—*Moraski v. T. A. Gillespie Co., Mass.*, 131 N. E. 441.

31. **Executors and Administrators**.—Ancillary Administration.—While ordinary primary administration should be granted in the state of the intestate's domicile, it cannot be said that he courts of another state, having jurisdiction, must necessarily wait for proceedings to be brought in the domiciliary state, especially where the only assets in either state are a right of action for death under the federal Employers' Liability Act.—*McCarron v. New York Cent. R. Co., Mass.*, 131 N. E. 478.

32. **Garnishment**.—Equitable Proceedings.—Trustee proceedings under the statute whereby an adverse claimant to the fund attached is made a party for the purpose of determining his claim are not equitable proceedings, but are in the nature of equitable relief in an action at law, so that the only action the court can take on sustaining the claim of the intervenor is to enter judgment discharging the garnishee, and no appeal will lie from such judgment as a final equitable decree.—*Garst v. Canfield, R. I.*, 113 Atl. 865.

33. **Husband and Wife**.—Void Conveyance.—In an action to recover from plaintiffs' father property formerly belonging to their grandmother, deceased, a writing introduced by defendant, executed by deceased, conveying the land to plaintiffs with a reservation to defendant of a life estate, was void and passed no interest to plaintiffs or defendant, the land conveyed belonging to a married woman, and her privity examination not having been taken.—*Clendenin v. Clendenin, N. C.*, 107 S. E. 453.

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34. **Insurance**—Breach of Warranty.—Rev. St. 1913, § 3187, providing that breach of a warranty or condition shall not avoid the policy unless such breach contributes to the loss, is applicable not merely to conditions existing at the time of application for and issuance of the policy, but to subsequent violations, and covers breaches of conditions as well as initial misrepresentations, notwithstanding the fact that the catchwords read "warranty not to avoid policy unless deceptive."—Security State Bank of Edenville v. Aetna Ins. Co., Neb., 183 N. W. 921.

35.—**Delay in Action**.—Where an insured failed to commence suit on a policy within the time fixed thereby, his delay was not excused by the company's conduct in agreeing to an appraisal and award of damages or other acts of the company contemplated by the terms of the contract.—John Tatham & Co. v. Liverpool, London & Globe Ins. Co., N. C., 107 S. E. 460.

36.—**Examination After Loss**.—Failure or refusal to submit to examination after loss does not bar recovery, but merely suspends the right of recovery until the condition of examination is complied with; and such failure or refusal is therefore to be pleaded in abatement, and not in bar, and, if the plea be sustained, its only effect is dismissal of suit as prematurely brought.—Humphrey v. National Fire Ins. Co., Tex., 231 S. W. 750.

37.—**False Statement**.—A positive statement of fact, falsely made in an application for insurance, and known to be false by the maker, with respect to a material matter, will, nothing else appearing, be deemed to have been made wilfully and with intent to deceive.—New York Life Ins. Co. v. Wertheimer, U. S. D. C., 272 Fed. 730.

38.—**Forfeiture**.—Courts do not favor forfeitures and will not enforce them against equity and good conscience, so that an insurance policy will not be declared forfeited for non-payment of premiums where insurer held, when the premium became due, more than enough money due the insured as sick benefits to pay the same.—North v. National Life & Accident Ins. Co., Mo., 231 S. W. 665.

39.—**Loss Through Hail**.—Where an assessor has not classified land as tillable, and had made no return to the county auditor as required by law, showing the number of cultivated acres, and where the owner had not made the affidavit required by section 6 of the hail insurance act, his risk is not covered, and he is not entitled to recover indemnity upon an attempted compliance with the law in the month of July after loss has been sustained through hail.—Bosson v. Oisness, N. D., 182 N. W. 1013.

40.—**Military Service**.—In an action on a life insurance policy where the defense was interposed that insured was killed in military service wherein he had engaged without the consent of insurer, held, that the provisions of the policy did not ipso facto work a forfeiture thereof by the death of insured while engaged in such service.—Hagelin v. Commonwealth Life Ins. Co., Neb., 183 N. W. 103.

41. **Intoxicating Liquors** — Possession of Equipment.—If defendant moved on premises where there was paraphernalia for the manufacture of intoxicating liquor, and took possession of such paraphernalia and proceeded to use it, he was guilty of having in possession equipment to manufacture intoxicating liquor not for medicinal, etc., purposes, though the equipment was already in existence on the premises when he took charge of them.—Thielepape v. State, Tex., 231 S. W. 769.

42.—**Use of Automobile**.—An automobile engaged in the transportation of intoxicating liquors was properly condemned, although the owner thereof was not a party to the transportation, or had notice of the same, where he had been warned of a report that the person driving it had been so using his car and was negligent in not getting rid of such person, and not acting upon the warning and following it up by an investigation.—Davenport v. State, Ala., 88 So. 557.

43.—**Use of Automobile**.—Automobile purchased by a father and lent or turned over to

his son for use as a public taxicab, to be paid out of the proceeds of the taxicab business, a license being issued to the son to run it in his name as owner, which the father knew, held subject to condemnation and forfeiture under Gen. Acts 1919, p. 13, § 13, where used by the son for the unlawful transportation of whisky.—Fearn v. State, Ala., 88 So. 591.

44. **Landlord and Tenant**—Assignment of Lease.—An assignment of an interest in a lease by one of two lessees to the other is a breach of a covenant against assignment, though the lessees were partners and, if not waived, is a defense to an action upon a covenant of renewal.—Saxeney v. Panis, Mass., 131 N. E. 331.

45.—**Forcible Entry**.—Landlords who entered premises in possession of delinquent tenant by removing lock from the door, and who removed the tenant's property therefrom and substituted own property in place thereof, and who thereafter remained in possession and excluded tenant therefrom, held guilty of forcible entry under Code Civ. Proc. § 1159, making every person who breaks open doors and windows or other parts of a house guilty of forcible entry.—California Products, Inc., v. Mitchell, Cal., 198 Pac. 646.

46.—**Lease**.—A lease providing that the last three years the rent should be raised and the amount fixed by the lessors was not void for uncertainty; as it provided means for the fixing of the rent; the word "reasonable" could be implied in the clause relative to rent.—Bird v. Couchols, Mich., 183 N. W. 36.

47.—**Title to Land**.—A tenant of one in possession of land, claiming title thereto, the title to which is in the United States government, may dispute his landlord's title by showing that fact; the ordinary rule which forbids a tenant disputing his landlord's title having no application in such case, because violative of public policy.—Ellis v. Sutton, Miss., 88 So. 159.

48. **Licenses**—Transient Merchant.—A butcher who had an established place of business in a city in the same county and who, at stated times each week, sent a truck load of meat into the town for sale to customers from the truck, is not a "transient merchant" in the town within Rev. Code 1919, § 10420, which defines such merchants by excluding therefrom permanent merchants who pay taxes upon their articles of trade in the county where the business is carried on the same as other resident dealers.—Town of Valley Springs v. Platt, S. D., 183 N. W. 131.

49. **Master and Servant**—Burden of Proof.—In an action for the death of a sub-contractor's employee, working on the ground when he was struck by a falling brick in a building in the course of construction, where the proofs as to the place from which the brick came fixed it between the third and ninth floors on which latter floor the sub-contractor's bricklayer was seen at work, and it appeared that men working for others were in the building, with bricks scattered over the various floors and on the window sills, plaintiff failed to meet the burden of proving that the sub-contractor, through his employees, caused the injury.—Fleccia v. Atkins, Pa., 113 Atl. 842.

50.—**Contributory Negligence**.—Where plaintiff, a carpenter, constructed a runway for wheelbarrow men which was some two inches lower than the door through the foundation wall, but the same was accepted, and at a time considerably later, in order to avoid it, a wheelbarrow man stepped on a loose board which had been placed to lessen the jar and was thrown to the ground and injured, the question of his contributory negligence under the circumstances held for the jury.—Forrester v. Walsh Fire Clay Products Co., Mo., 231 S. W.

51.—**Course of Employment**.—A traveling salesman whose duties required him not only to be attentive in seeking orders for his employer but in being courteous, obliging, and performing services not strictly relating to the sale of commodities entrusted to him, but which aided in the sale because of the accommodation and consideration, was entitled to compensation under Workmen's Compensation Act, § 315, where he was injured while driving to his home

to wait for a telephone call from a customer who had become separated from his party at a fair and desired to be taken home by the salesman in his car if he could not find his own party.—*Chase v. Emery Mfg. Co., Pa.*, 113 Atl. 840.

52.—**Negligence**.—Where a railroad employee was engaged in removing lamps from rear of passenger train in depot and filling them for future use, it was negligence as to him to move the train backward without notice of some kind to such employee, in view of federal Employers' Liability Act.—*Grijnuk v. McAdoo, N. J.*, 113 Atl. 920.

53.—**Mortgages**.—**Maturing Debt**.—Where a mortgage provided for maturing of debt on mortgagor's default in payment of principal, interest or taxes, upon the mortgagor's failure to pay the taxes within the time required by the mortgage, the mortgagee had the right to treat the whole mortgage debt as due or to waive the default; and such right does not depend on the motive prompting his election, and hence the exercise of the right by electing to foreclose cannot be objected to on the ground that it is oppressive or inequitable.—*Lotterer v. Leon, Md.*, 113 Atl. 887.

54.—**Navigable Waters**.—**Accretions**.—The accretions contemplated by Code Pub. Gen. Laws, art. 54, §§ 47-49, to which the riparian owners are entitled by the statute, are not confined to those which, in their formation, start at the shore and extend outward to the channel, but also embrace those which start in the channel and lie between the shore and the channel.—*Melvin v. Schlessinger, Md.*, 113 Atl. 875.

55.—**Nuisance**.—**Hospital**.—It cannot be assumed in advance of its establishment that a hospital for contagious diseases well equipped and managed under the supervision of public health boards will be a nuisance.—*Cook v. City of Fall River, Mass.*, 131 N. E. 346.

56.—**Only Accrued Damages Are Recoverable**.—In an action for damages for the maintenance of a private nuisance, plaintiff can recover only the damages which had accrued prior to the trial of the action, and cannot recover permanent damages, and it was not error for the court to refuse to submit the issue of permanent damages tendered by defendant and objected to by plaintiff.—*Morrow v. Florence Mills, N. C.*, 107 S. E. 445.

57.—**Principal and Agent**.—**Authority of Agent**.—A general agent left in charge of retail drug business did not have authority to bind his principal under a contract wherein he purchased a piano and printed matter to be used in a voting contest, seller guaranteeing a certain increase of the drug business as a result of the voting contest.—*Loveland v. Kitterman, S. D.*, 183 N. W. 128.

58.—**Railroads**.—**Spur Track**.—Under the Public Utilities Act, it was intended that both a railroad company and a public grain elevator connected by a spur track with the railroad's main track should be subject to the control of the Public Utilities Commission, such a spur track being an instrument of commerce devoted to public use and subject to regulation.—*Public Utilities Commission v. Smith, Ill.*, 131 N. E. 371.

59.—**Sales**.—**Breach of Contract**.—In an action by the buyer of cider for fraud in the inception of the contract, the entire conversations which led up to the contract, necessarily involving any conversations about the collateral contracts of resale, were provable, and plaintiff, under his claim of damages through loss of profits, would be permitted to prove he could not procure cider in the open market.—*Foster v. De Paolo, N. Y.*, 188 N. Y. S. 746.

60.—**Delivery**.—Where contract for sale of burlap specified, "Delivery—After completion your order" of a specified prior date, the word "completion" was not used in the sense that the prior order or contract could not be deemed "completed" until the goods delivered thereunder were paid for; hence the seller breached his contract by refusing to make delivery until after the former invoice was paid.—*Fulton Bag & Cotton Mills v. Frankel, N. Y.*, 188 N. Y. S. 709.

61.—**Statutes**.—**Conformity of Title**.—Act March 13, 1919, described in title as an act to amend Civ. Code 1912, § 2937, as amended, a special act relating to the tax levy applicable only to the cities of Anderson and Spartanburg, and purporting in its body to remove all limitations upon the authority of cities of more than a specified population to impose annual taxes for municipal purposes, held violative of Const. art. 3, § 17, in that the title does not conform to the body of the act.—*Robinson v. City of Columbia, S. C.*, 107 S. E. 476.

62.—**Discriminatory**.—The obligation imposed upon municipalities having waterworks constructed prior to 1912 to furnish free service to charitable institutions operates as a discrimination against them and in favor of municipalities constructing waterworks after 1912, and therefore section 3963, General Code, and section 14769, General Code, in so far as they require free service to charitable institutions, are in conflict with section 26, article II, of the Constitution of Ohio, requiring laws of a general nature to have uniform operation throughout the state, and therefore inoperative.—*Village of Euclid v. Camp Wise Ass'n, Ohio*, 131 N. E. 349.

63.—**Taxation**.—**Property in Transit**.—Products of the state intended for exportation to another state do not cease to be a part of the general mass of property in the state subject to taxation until shipped or entered with a common carrier for transportation to another state, or until they have been started upon such transportation in a continuous route or journey, or until they have entered upon their final journey out of the state.—*Champlain Realty Co. v. Town of Brattleboro, Vt.*, 113 Atl. 806.

64.—**Telegraphs and Telephones**.—**Liability for Error**.—Telegraph company was not liable to addressee for error in transmission of unrepeatable interstate message where the contract under which the telegram was received and transmitted limited liability in such case to cost of sending message, and where the claim for damages was not presented within 60 days after the telegram was filed with the company for transmission. In view of Act Cong. June 13, 1910, providing for regulation of interstate commerce by telegraph by Congress.—*Western Union Telegraph Co. v. Chas. C. Brent & Bro., Ky.*, 230 S. W. 921.

65.—**Tenancy in Common**.—**Fiduciary Relationship**.—There is no such a relationship of trust and confidence between tenants in common that transactions between them, whereby one acquires the interest of the other, are, by reason of the relationship itself, presumed to be fraudulent, casting the burden on the tenant, acquiring the interest of the other of showing that he practiced no fraud or other inequitable means.—*Klein v. Waltman, N. Y.*, 188 N. Y. S. 331.

66.—**Weapons**.—**Right to Bear Arms**.—Pub. Loc. Laws 1919, c. 317, so far as it prohibits the carrying of a pistol unconcealed off of one's own premises without a permit, for which a fee of \$5 and a bond in the sum of \$500 is required, is invalid under Const. art. 1, § 24.—*State v. Kerner, N. C.*, 107 S. E. 222.

67.—**Wills**.—**Execution**.—In action to set aside a will and revoke order probating it the averment that decedent executed the alleged prior will under which plaintiff claims amounted to an allegation that all acts were done which are required to constitute execution under Burns' Ann. St. 1914, § 3132, including the signing by testator at a time when he possessed testamentary capacity, and the attestation in his presence by two competent witnesses.—*Emhardt v. Collett, Ind.*, 131 N. E. 48.

68.—**Witnesses**.—**Inspection of Corporate Books**.—A corporation cannot, on the theory that its officers or agents might be incriminated by a disclosure of the corporate records prevent inspection of corporate books, for the immunity against self-incrimination is a personal one, which covers the officers and agents alone, and the corporation which has no such immunity cannot invoke it on behalf of its officers and agents.—*Nekoosa-Edwards Paper Co. v. News Pub. Co., Wis.*, 182 N. W. 919.